**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 4350 OF 1989**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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**AUDICHYA BRAHMA SAMAJ CHHATRALAY TRUST - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & ORS.- Respondent(s)**

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**Appearance :**
SHRI D. D. VYAS for Petitioner(s).
SHRI L. R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s):1 - 3.
NONE for Respondent (4)-(6).
SHRI DHAVAL G. NANAVATI for Respondent(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 19/12/2006**

**ORAL JUDGMENT**

1. The short facts necessary for disposal of the present Writ Application are that the present petitioner, a registered Trust under the Bombay Public Charitable

Trust Act, had purchased land bearing Survey No.108 of Memnagar, Ahmedabad on 4th December, 1963 with an avowed object of providing facility to the students by raising construction of hostel, etc. Facing paucity of funds, the petitioner could not proceed with the construction, therefore, they resolved to transfer the property to Ashirwad Trust. They, accordingly, made an application to the Charity Commissioner, who was gracious enough to grant permission on 15th October, 1975. As the land was coming within the mischief of the Urban Land (Ceiling & Regulation) Act, 1976, permission for transfer of the same was sought, the same was granted to the petitioner on 14th April, 1977. The petitioner-Trust executed a gift deed in favour of Ashirwad Trust and handed over the possession of the property on 17th May, 1977. Entries of the ownership of Ashirwad Trust and the transfer made by the present Trust were made in the revenue records. Thereafter, the Deputy Collector initiated proceedings under Section 66 of the Land Revenue Code, read with Rule 100 of the Land Revenue Rules, on the ground that the land was put to non-agricultural use without obtaining any permission from the competent authority.

1.1 The petitioner appeared before the said authority and informed them that they had already

transferred the property in 1977 to Ashirwad Trust and as such, no proceedings could be continued against them. However, on 24th October, 1980, the Deputy Collector made an order against the interest of the petitioner asking them to pay the revenue at a higher rate with a further direction to get an order of regularisation. The said order was challenged in an appeal before the Collector, but, the said appeal came to be dismissed on 29th January, 1988.

1.2 The petitioner, being aggrieved by the appellate order, took up the matter in revision before the Special Secretary (Disputes/Appeals). On 28th March, 1989, the revision was rejected, according to the petitioner without any jurisdiction or authority, the Special Secretary, in the revision filed by the present petitioner, issued a direction for removal of the construction.

1.3 The petitioner has filed the present Writ Application challenging the said orders and the order directing demolition.

2. Shri Vyas, learned Counsel for the petitioner, submits that as the petitioner had already transferred

the property in favour of Ashirward Trust much before its non-agricultural use, no proceedings could be drawn against the petitioner. He also submits that if the petitioner was not answerable to anything, then, in petitioner's revision, the Special Secretary could not issue a direction relating to demolition.

3. Shri L. R. Pujari, learned Counsel for the respondent-State, submits that the village form available before the authority was showing the name of the present petitioner and the present petitioner, for the reasons best known to it, did not file copy of the transfer deed and under the circumstances, the authorities were justified in drawing the proceedings against the petitioner. He also submits that the observations made by the Special Secretary are that the village form had the name of the petitioner as the person in possession and that the second right was of Ashirwad Trust. He submits that in view of these observations, the authorities were justified in passing the orders against the interest of the petitioner.

4. Shri Vyas, in reply to the same, submits that from the order passed by the Deputy Collector, it would clearly appear that some documents were produced before

the authority and at the time of spot verification, they were informed that the present petitioner-Trust has already transferred the property to Ashirward Trust.

5. From the records, it would clearly appear that the present petitioner-Trust, after obtaining the permission from the Government, had transferred the property on 17th May, 1997 in favour of Ashirwad Trust. Once the fact is accepted in favour of the present petitioner, then, as a consequence, it also has to be held that the present petitioner-Trust would not be liable to pay the additional assessment amount, nor it would be required to ask for permission or regularisation. The orders passed by the authorities directing the petitioner to pay the additional assessment or ask for permission for regularisation, are bad. They deserve to and are, accordingly, quashed. However, the petitioner, from its own showing, does not appear to be the owner of the construction made on the spot and if that be so, the petitioner would not be entitled to challenge that part of the order passed by the Secretary, even if the same has been made in the revision filed by the petitioner. Once the petitioner detaches itself from the property or the construction, then, it would be a third party and would not be allowed to challenge the

order of demolition which was made against the interest of Ashirward Trust. I refuse to interfere with that part of the order. The petition to the extent above is allowed. Rule is made absolute to the aforesaid extent only. No costs.

***[R.S.Garg, J.]***

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